



DELTA STEWARDSHIP COUNCIL

A California State Agency

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P. Joseph Grindstaff

Date: May 11, 2012

Subject: Final Staff Draft of the Delta Plan coming on Monday and personnel changes at the Council

Here is a fast update of Council activity.

First, the Delta Stewardship Council staff is releasing the Final Staff Draft Delta Plan on Monday. Our staff will also recommend we prepare and circulate (for 45-days) a supplemental volume to the existing Draft Program EIR. This decision will push the adoption date of the Delta Plan itself to November or December of this year.

The Final Staff Draft Delta Plan will be posted at <http://www.deltacouncil.ca.gov/>. A history of the various drafts is at the end of this memo, but the first draft appeared fourteen months ago.

The Council will adopt a Final Delta Plan later in November or December of this year, and review of our regulatory policies by the Office of Administrative Law should be complete by February or March 2013.

Looking back over the months we have spent revising versions of the Delta Plan it is clear: interest group reaction to the various staff draft Delta Plans is mostly “you have gone too far”, or conversely, “you have not gone far enough.” I can live with that.

Second, two personnel changes are in store. The Governor has appointed **Felicia Marcus**, a DSC Board Member, to the State Water Resources Control Board, and she will assume her new duties in short order.

Executive Officer **Joe Grindstaff** has announced his pending retirement. This is not a surprise, since he has threatened retirement periodically over the past two years. Joe brought to this process an amazing knowledge of water and environmental issues, together with a balanced and fair-minded approach to controversy. He is an example of public service at its best.

We will miss him greatly, and reluctantly start a recruitment process for his replacement. We expect that Joe’s tenure will overlap with his replacement, ending close to the final adoption of the Delta Plan.

Coequal goals means the two goals of providing a more reliable water supply for California and protecting, restoring, and enhancing the Delta ecosystem. The coequal goals shall be achieved in a manner that protects and enhances the unique cultural, recreational, natural resource, and agricultural values of the Delta as an evolving place.

—CA Water Code §85054

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Summary Final Staff Draft of the Delta Plan
Page Two

Finally, I commend to your attention the March 31 report of the National Research Council of the National Academies, *Sustainable Water and Environmental Management in the California Bay-Delta*, http://www.nap.edu/catalog.php?record_id=13394#toc. It is a key to understanding the water and environmental problems of California.

Written by nationally recognized scientists, engineers and other experts, it is remarkable. Their explanation of what can be accomplished, and what cannot, is clear and unsettling at the same time. This report tells us what we need to know, not what we want to hear.

Background and what you will see in the Final Staff Draft Delta Plan

State Policy goals and the Final Staff Draft Delta Plan

The Council, an independent agency of state government, started its work two years ago, and the issues that were hot then, remain hot now. The Final Staff Draft Delta Plan helps to achieve fundamental elements of the Delta Reform Act of 2009.

California state policy is the achievement of coequal goals

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“Covered actions” of state and local agencies are required to be consistent with the Delta Plan, and the Delta Stewardship Council will review and determine consistency. (Water Code Sec. 85225-85225.30, and related sections)

The Final Staff Draft Delta Plan modified language to accommodate local concerns. This draft contains only a few regulatory elements, and stays well within the boundaries set by the 2009 legislation. As you would expect, some interested parties insist that state law should not cover anything they choose to do.

The Bay-Delta Conservation Plan (BDCP) will be incorporated into the Delta Plan if it meets the test of law as certified by the California Department of Fish & Game. The Fish & Game determination may be appealed to the Council. (Water Code Sec. 85320)

The Final Staff Delta Plan calls for speedy completion of BDCP. It is hard to imagine any benefit that comes from delaying analysis of facilities improvement alternatives, and identification of Delta ecosystem alternatives required to complete BDCP. Thus, the draft Plan supports successful completion of BDCP.

The Council also believes it essential that the Water Board quickly adopt its updated Delta water quality standards.

Some interests have suggested BDCP be halted until new Delta water quality standards are adopted. Others insist on delaying adoption of Delta water quality standards until BDCP is concluded. My own view is that these requests are more about jockeying for tactical advantage than anything else. Consistent with the Coequal Goals, we recommend concurrent action on both.

Key elements of the Final Staff Draft Delta Plan

The Final Staff Draft Delta Plan has fourteen (14) policies (which are enforceable) and sixty-eight (68) recommendations, which are not enforceable, but essential to achieving the coequal goals.

- 1. Reduced reliance on the Delta in meeting California's future water supply needs through a statewide strategy of investing in improved regional supplies, conservation and water use efficiency. (Water Code Sec. 85021)**

Our enabling statute establishes a state policy to 'reduce reliance' on Delta water, and ties that policy to increased regional supplies of water, statewide water conservation, and water use efficiency. The Final Staff Draft Delta Plan includes a requirement that each water supplier who uses Delta water, or proposes to move water through the Delta, to show that they are using their best efforts to achieve high level of efficiency and conservation, as well as actually implementing their own water management plans. The Delta Plan further recommends that all water suppliers meet additional planning standards, including how they would weather up to a 36-month interruption in all Delta water supplies.

- 2. Restore habitats in five high priority locations in the Delta and Suisun Marsh to carry out federal and state fish and wildlife agency plans to recover endangered species, rebuild salmon runs, and enhance other wildlife.**

Our enabling statute urges recognition of appropriate federal and state plans into the Delta Plan, to help achieve coordination between various agencies. Maps and recommendations of some federal, state or local plans are in the draft Delta Plan. Many important plans are under development, most notably BDCP and the Central Valley Flood Plan. BDCP has its own statutory incorporation language, as previously mentioned. When other plans are completed, they will be reviewed for possible use with the Delta Plan.

- 3. Establishment of new Delta water quality standards by June 2014, and new Delta watershed water quality standards for high-priority tributaries by 2018 in support of the coequal goals.**

The State Water Resources Control Board plans to adopt new Delta water quality standards by June 2014. The Final Staff Draft Delta Plan supports this (as have previous drafts). Adoption of these new standards is essential to achieving the coequal goals.

Of course, more natural flows in the Delta do not stand alone as ‘the only’ solution to all Delta ecosystem and water quality problems. Our scientific advisors tell us, however, that water flow and available habitat are among the most essential of ingredients. An understanding of ‘other stressors’ like pollution and invasive species is essential to address what is a very complicated challenge.

4. Protecting the Delta as a unique place; locating urban development in urban and urbanizing areas, and protecting rural lands for agriculture.

The coequal goals require the protection and enhancement of the ‘unique’ values of the Delta. One such value is agriculture, and the Final Staff Draft Delta Plan encourages local governments to avoid conflict by concentrating development in urban/urbanizing areas, not taking farmland out of production.

The Staff Draft Delta Plan recommends designating the Delta as a national heritage area. It seeks to protect historic communities like Locke and Walnut Grove by recognizing their boundaries, and urging water and ecosystem managers to avoid conflicts with existing and planned land use when feasible, and to mitigate the impacts that cannot be avoided.

5. Risk reduction and enhancement of Delta flood protection through expansion of the Yolo Bypass; improvements to the Cosumnes River-Mokelumne River Confluence; establishment of the Lower San Joaquin River Floodplain Bypass; and using setback levee where feasible.

These policies help achieve higher levels of protection for flood-threatened communities, which helps to achieve the coequal goals. Ancillary language is included to prohibit encroachment on floodplains and prohibit new subdivisions on flood prone rural lands.

Helping to reduce the risk of flooding through expansion and development of floodplains, also allows us to operate those floodplains to achieve valuable ecosystem benefits. This policy is a good example of how to help achieve the coequal goals through actions that have multiple benefits --- risk reduction, ecosystem improvement and protection of the existing water conveyance system. The same argument applies for the increased use of setback levees.

6. Setting of flood protection priorities for state investment in the Delta that are appropriate to the uses of the land protected.

This policy builds on a long and painful effort by federal, state and local authorities to develop a rational flood and risk reduction policy in the Delta. The Final Staff Draft Delta Plan asserts that wise flood and levee policies --- which reduce risk and do not encourage additional growth within inherently flood prone areas --- is essential.

The Plan affirms that by the end of 2015, the Council will recommend investment strategy priorities to the Legislature and Governor for flood control protection and levees. I predict that this will be extreme controversial.

Unlike similar efforts, this effort is premised on the principal of beneficiaries pay. This includes a calculation of state interests, including ecosystem protection, water supply reliability and a state share of protecting life and property. It also includes a calculation of the interests of other parties, public and private.

Although the current Final Staff Draft Delta Plan does not include recommendations on appropriate cost-sharing ratios, the issue will come back during our deliberations. California currently has a confusing array of cost-sharing ratios for various flood or levee programs. There appears to be no single state policy. Given the current recession, the drain on the state General Fund, and competition for bond funds with schools, healthcare and law enforcement, it would be irresponsible to believe that the State is able to pay all costs for flood protection improvements.

Landowners with property in a floodplain commonly prefer to see higher and stronger levees, rather than floodplain bypasses or levee setbacks. This is understandable, but not always practical or cost effective. Likewise, some local governments oppose any limits on urban development in flood threatened areas. Acting within the bounds of California law, the Final Staff Draft Delta Plan seeks the highest level of protection, utilizing the most practical alternatives.

The Final Staff Draft Delta Plan strongly advocate moving from a 'one size fits all' level of flood protection to one based on Expected Annual Damage and the consequences of flooding. This discussion gets highly technical, but it is crucial.

7. Creation of a new, five-county controlled Delta Flood Risk Management Assessment District, which will integrate emergency response by local agencies, and with authority to impose appropriate fees for any local cost share.

Summary Final Staff Draft of the Delta Plan
Page Six

Establishment of a locally based flood assessment district is long overdue. The current efforts of more than 100 Reclamation Districts, counties, cities and other federal, state and local agencies are commendable, but a unified local decision-making body will be more effective.

Related to this is our call on the California Public Utilities Commission to require their regulated utilities that cross the Delta to increase their level of flood protection, and to pay their fair share of ongoing risk reduction measures. We also recommend that state agencies with infrastructure in the Delta start to set aside money to pay for a fair share of the flood protection they currently receive.

A final major point is the increased role of science, and the start of an understandable state policy on adaptive management contained explained in the draft Delta Plan.

We have several months of intense activity ahead of us, and lots of controversy. I am very happy with the hard work of our staff and consultants, and constantly impressed with my colleagues who remain diligent, active, and although occasional skeptical, firmly committed to meeting the coequal goals and achieving a major advancement of California water and ecosystem policy on time!

Delta Plan drafts	Release dates
<input type="checkbox"/> First draft Delta Plan	February 2, 2011
<input type="checkbox"/> Second draft Delta Plan	March 18, 2011
<input type="checkbox"/> Third draft Delta Plan	April 22, 2011
<input type="checkbox"/> Fourth draft Delta Plan	June 13, 2011
<input type="checkbox"/> Fifth draft Delta Plan and EIR	August 2, 2011
Final Staff Draft Delta Plan	May 14, 2012

Please call if you have any questions (916) 445-4500.

Sincerely,

Phil Isenberg, Chair

